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U.S. BANKRUPTCY COURT
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re) Case No. SA 02-13233 JR
LINDA GONZALEZ,) Chapter 7
Debtor.) MEMORANDUM OPINION
Date: October 14, 2003
Time: 2:30 P.M.
Room: 5A

I. INTRODUCTION

On April 25, 2002, Linda Gonzalez ("Debtor") filed a chapter 7¹ petition. Debtor listed real property located at 1321 S. Claremont Street, Anaheim, California (the "Property") on her schedules. Shortly after Debtor's § 341(a) meeting of creditors, the chapter 7 trustee ("Trustee") filed a no asset report resulting in the technical abandonment of the Property.

Later, Trustee moved to (1) reopen the case, (2) withdraw the no asset report, and (3) revoke the technical abandonment.

¹ Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

1 The motion was granted, and Debtor timely moved for
2 reconsideration of the decision. After the hearing on October
3 14, 2003, I took the matter under submission.
4

5 II. JURISDICTION

6 I have jurisdiction over this matter under 28 U.S.C.
7 § 157(b)(1). This is a core proceeding under the Bankruptcy
8 Code, as defined in 28 U.S.C. § 157(b)(2)(A).
9

10 III. STATEMENT OF FACTS

11 On her schedules, Debtor listed the value of the Property as
12 \$125,000 and stated that it was encumbered by a secured claim in
13 the amount of \$60,000.² Debtor also claimed a homestead
14 exemption for the Property in the amount of \$65,000.

15 At Debtor's § 341(a) meeting, Trustee questioned Debtor
16 about how the Property had been valued.³ Debtor's attorney
17 answered that it had been valued during Debtor's recent divorce.

18 Trustee filed a no asset report, and the case was closed on
19

20 ² Debtor used a form schedule to list her interests in real
21 property. Debtor listed the Property, but left the column marked
22 "Nature of Debtor's Interest in Property" blank.

23 ³ The interrogation went as follows:

24 Trustee: Okay, how did you value the Claremont Street
25 real estate at \$125,000?

26 Debtor: The value?

27 Trustee: Yes, you want to tell me about that?

28 Debtor's Attorney: She just went through a divorce and,
ah, the house was valued in the divorce at that . . .
amount.

Trustee: Okay.

Supplemental Opposition to Motion to Revoke Technical Abandonment
(August 1, 2003), at 2.

1 August 26, 2002.

2 On June 19, 2003, Trustee filed a motion to reopen the case
3 for the purpose of withdrawing the no asset report, revoking the
4 abandonment, and administering the Property. Trustee stated that
5 he had received new information indicating that the Property had
6 been grossly undervalued and that its actual fair market value
7 was between \$275,000 and \$290,000. Trustee argued that Debtor
8 had misled him or, in the alternative, that the abandonment was
9 inadvertent and that creditors were entitled to administration of
10 the Property.

11 In opposition to the motion, Debtor explained that she had
12 relied on her former attorney in valuing the Property.⁴ Debtor
13 argued that any misunderstanding about the value of the Property
14 was the result of Trustee's failure to conduct a proper inquiry.
15 Specifically, Debtor noted that Trustee did not ask whether the
16 value listed represented the full value of the Property or only
17 Debtor's community property interest.

18 Although the evidence indicated that Debtor had not
19 intentionally misrepresented the facts or acted fraudulently in
20 connection with her case, I granted the motion to withdraw the no
21 asset report and revoke the technical abandonment. I now DENY
22 Debtor's motion for reconsideration.

23
24 ⁴ Specifically, Debtor stated that when she first met with her
25 attorney, she told him that she did not know the value of the
26 Property but that she believed it was approximately \$200,000.
27 Debtor's attorney replied that he would investigate the value and
28 would exclude the interests of her husband and daughter. When
Debtor returned to her attorney's office, she met with one of his
assistants to sign her petition. Debtor noted that her attorney
had listed the value as \$125,000. She assumed that he had listed
the correct amount.

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IV. DISCUSSION

A. Revocability of a Technical Abandonment

Section 554(c) provides:

Unless the court orders otherwise, any property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

11 U.S.C. § 554(c). The abandonment of property of the estate that results from the closing of a case is commonly referred to as a "technical abandonment" because it occurs automatically, without any notice or hearing. DeVore v. Marshack (In re DeVore), 223 B.R. 193, 197 (9th Cir. BAP 1998).

The DeVore court thoroughly analyzed the issue of revocation of a technical abandonment. The court explained:

A number of cases recognize a general rule that abandonment is irrevocable, even if it is subsequently discovered that the abandoned property had greater value than previously believed . . . The rationale for the general rule is that once an asset has been abandoned, it is no longer part of the estate and is effectively beyond the reach and control of the trustee. Courts have also noted the policy of preserving finality.

Notwithstanding the general rule, the prefatory language of § 554(c) "unless the court orders otherwise," indicates that courts have discretion to affect or prevent technical abandonment simply by ordering otherwise. The statute does not limit such an order to the period prior to case closure, and courts have set aside technical abandonments in "appropriate circumstances." "Appropriate circumstances" have been found where the trustee is given false or incomplete information about the asset by the debtor; the debtor fails to list the asset altogether; or where the trustee's abandonment was the result of a mistake or inadvertence, and no undue prejudice will result

1 in revocation of the abandonment.

2 Id. at 198 (citations omitted). Thus, the DeVore court
3 acknowledged that courts had developed three exceptions to the
4 general rule of irrevocability of a technical abandonment: (1)
5 where the trustee is given false or incomplete information about
6 the asset by the debtor, (2) where the debtor fails to list the
7 asset altogether, and (3) where the trustee's abandonment was the
8 result of a mistake or inadvertence, and no undue prejudice will
9 result from revocation of the abandonment. Id.

11 The first two exceptions listed in DeVore have been widely
12 accepted and applied without substantial debate. In re Ozer, 208
13 B.R. 630, 633 (Bankr. E.D.N.Y. 1997) (characterizing these
14 exceptions as "universal exceptions to the finality of
15 abandonment"). Indeed, the "false or incomplete information"
16 exception has been discussed in several recent cases in this
17 circuit. See Catalano v. Comm'r of Internal Revenue, 279 F.3d
18 682, 686 (9th Cir. 2002); Cusano v. Klein, 264 F.3d 936, 946 (9th
19 Cir. 2001); Vasquez v. Adair (In re Adair), 253 B.R. 85, 89 (9th
20 Cir. BAP 2000).

21 On the other hand, the third exception listed in DeVore has
22 not been addressed by courts in this circuit. In fact, later in
23 its opinion, the DeVore court specifically reserved decision on
24 the validity of the third exception:
25

26 We do not here decide whether a court can, for
27 equitable reasons, or because of the trustee's
28 inadvertence, set aside a valid technical

1 abandonment: those issues must await other cases.⁵

2 DeVore, 223 B.R. at 199.

3 B. Abandonment of the Property

4 1) *False or Incomplete Information*

5 Revocation of a technical abandonment is appropriate where a
6 trustee is given false or incomplete information so as to preclude
7 a proper investigation of the asset. Catalano, 279 F.3d at 686;
8 Cusano, 264 F.3d at 946; Adair, 253 B.R. at 89.

9
10 Here, the information provided by Debtor was either false or
11 incomplete.⁶ Debtor's petition listed the value of the Property
12 as \$125,000 when the value was actually substantially higher.
13 Debtor's counsel confirmed this valuation at the § 341(a) meeting,
14 stating that the Property had been valued at \$125,000 during
15 Debtor's recent divorce. If Debtor and her attorney intended to
16 list the fair market value of the Property, the information
17 provided in Debtor's schedules was false. On the other hand, if
18 Debtor intended to list only one half the value of the Property,
19 then the schedules were improperly completed,⁷ and they provided

21 ⁵ The issue presented on appeal in DeVore was whether
22 reopening a case automatically revoked a technical abandonment.
23 DeVore, 223 B.R. at 197-98. The court held that the reopening of
a case, by itself, does not revoke a technical abandonment. Id. at
199.

24 ⁶ The evidence indicates that Debtor did not intentionally
25 conceal information about the Property. However, in the Ninth
26 Circuit, an intent to conceal is not a required element under the
exception to irrevocability for false or incomplete information.
27 Catalano, 279 F.3d at 686; Cusano, 264 F.3d at 946.

28 ⁷ Even if the Property was a community property asset, Debtor
was required to list its full value. 11 U.S.C. § 541(a)(2); Dumas
v. Mantle (In re Mantle), 153 F.3d 1082, 1085 (9th Cir. 1998)

1 incomplete information regarding the basis for the valuation.

2 Here, the issue is whether Trustee was effectively precluded
3 from conducting a proper investigation of the Property as a result
4 of the information provided. A trustee has a duty to investigate
5 the financial affairs of a debtor. 11 U.S.C. § 704. In
6 conducting his investigation, a trustee must "exercise that
7 measure of care and diligence that an ordinarily prudent person
8 would exercise under similar circumstances." United States v.
9 Aldrich (In re Rigden), 795 F.2d 727, 730 (9th Cir. 1986); Kashani
10 v. Fulton (In re Kashani), 190 B.R. 875, 884 (9th Cir. BAP 1995).
11 However, a trustee is entitled to rely on statements from a debtor
12 in carrying out his duties. See Olsen v. Zerbetz (In re Olsen),
13 36 F.3d 71, 73 n.3 (9th Cir. 1994).
14

15 Here, Debtor signed the petition under oath, stating that the
16 fair market value of the Property was \$125,000. Trustee then
17 questioned Debtor at her § 341(a) meeting about how the Property
18 had been valued on her schedules. Debtor's attorney interjected,
19 stating that the Property had been valued during Debtor's recent
20 divorce. Therefore, Trustee had a statement by Debtor under oath
21 as well as a statement from an officer of the court indicating
22 that the Property was properly valued at \$125,000.
23

24 Trustee reasonably relied on the information provided by
25 Debtor and her attorney and determined that administration of the
26 Property would not benefit the estate. There was no indication
27

28 (holding that all community property of a divorcing couple is part
of the bankruptcy estate until the property is divided by court
order).

1 that Debtor's schedules listed anything but the full value of the
2 Property. The statements of Debtor and her counsel were
3 misleading, lacked full disclosure, and effectively precluded
4 Trustee from fully investigating the value of the Property. As a
5 result, Trustee filed a no asset report, causing the case to be
6 closed and the Property to be technically abandoned. Under these
7 circumstances, a revocation of the technical abandonment is
8 appropriate.

9
10 2) *Mistake or Inadvertence*

11 As an alternative basis for relief, Trustee argued that the
12 technical abandonment was inadvertent. As noted above, the
13 existence of an exception to the principle of irrevocability of
14 technical abandonments for a trustee's mistake or inadvertence has
15 not been determined by courts in this circuit.

16 Other circuit courts have found that mistake, inadvertence,
17 or excusable neglect are appropriate grounds for vacating a
18 technical abandonment under Federal Rule of Civil Procedure
19 ("FRCP") 60(b)(1) (applicable in bankruptcy under Rule 9024). See
20 Woods v. Kenan (In re Woods), 173 F.3d 770 (10th Cir. 1999);
21 Matter of Lintz West Side Lumber, Inc., 655 F.2d 786, 791 (7th
22 Cir. 1981). The rule permits a court to vacate a prior order
23 based on "mistake, inadvertence, surprise or excusable neglect" as
24 long as the motion is brought within one year of entry of the
25 order. Fed. R. Civ. Proc. 60(b)(1).

26
27 A technical abandonment occurs upon an order from the court
28 closing a case. 11 U.S.C. § 554(c). Therefore, a technical

1 abandonment can be revoked by vacating the order closing the
2 case.⁸ See Woods, 173 F.3d at 778. FRCP 60(b)(1) is a proper
3 mechanism for vacating prior orders of the court. Therefore, I
4 see no reason to fashion an additional exception for revoking a
5 technical abandonment based on mistake or inadvertence outside
6 FRCP 60(b)(1). See Lintz, 655 F.2d at 791 ("There is no
7 indication in the Rules of Bankruptcy Procedure that abandonment
8 orders should be treated differently than other orders by a
9 bankruptcy judge which are subject to reexamination").

10
11 A bankruptcy court has the equitable power to "modify or
12 vacate its order so long as no intervening right has become vested
13 in reliance thereon." Chinichian v. Campolongo (In re
14 Chinichian), 784 F.2d 1440, 1443 (9th Cir. 1986). Here, although
15 Trustee did not specifically raise FRCP 60(b), he argued mistake
16 and inadvertence as a basis for revocation. In addition,
17 Trustee's motion was filed within one year of the order closing
18 Debtor's case. Finally, Debtor has not shown that she
19 detrimentally relied on the abandonment.⁹ Therefore, it is

20
21 ⁸ This approach is not inconsistent with DeVore. Although
22 reopening a case does not automatically revoke a technical
23 abandonment, granting relief from an order closing a case may
24 result in a revocation of a technical abandonment. See Woods, 173
25 F.3d at 778.

26 ⁹ For the first time, in her reply to Trustee's opposition to
27 the motion for reconsideration, Debtor argued that she was
28 prejudiced as a result of the abandonment. Debtor asserted that
had she known the Property would be administered by Trustee, she
would have moved to dismiss her case. However, this argument fails
for a number of reasons. First, the assertion is not supported by
any evidence. Second, Debtor has not shown that cause existed for
a voluntary dismissal as required under § 707(a). Third, arguments
that are raised for the first time in a motion for reconsideration

1 appropriate to consider FRCP 60(b)(1) in determining whether it is
2 equitable to grant a revocation of the technical abandonment of
3 the Property. See Meyer v. Lenox (In re Lenox), 902 F.2d 737, 740
4 (9th Cir. 1990) (stating that a bankruptcy court can raise FRCP
5 60(b) sua sponte when equity so requires).

6 The Ninth Circuit has explained that in determining whether
7 relief is appropriate under FRCP 60(b)(1), courts should consider
8 "(1) the danger of prejudice to the opposing party; (2) the length
9 of the delay and its potential impact on the proceedings; (3) the
10 reason for the delay; and (4) whether the movant acted in good
11 faith." Bateman v. U.S. Postal Serv., 231 F.3d 1220, 1223-24 (9th
12 Cir. 2000) (citing Pioneer Inv. Servs. Co. v. Brunswick Assocs.
13 Ltd. P'ship., 507 U.S. 380, 395 (1993)).

14 Here, there does not appear to be any danger of prejudice to
15 Debtor. Although Trustee's delay in moving to revoke the
16 abandonment was considerable, the delay is not unreasonable in
17 light of Debtor's failure to properly disclose the value of the
18 Property. In addition, Trustee has acted in good faith in
19 attempting to recover the Property for administration. Finally,
20 creditors will be deprived of substantial value that they
21 otherwise would be entitled to if Trustee's motion is denied.
22 Therefore, relief from the order closing the case and the
23 resulting technical abandonment of the Property is appropriate
24
25

26 and that could have been raised in the original motion, are waived.
27 See Beech Aircraft Corp. v. U.S., 51 F.3d 834, 841 (9th Cir. 1995).
28 Therefore, Debtor has failed to show that she detrimentally relied
on the abandonment of the Property.

1 under FRCP 60(b)(1).

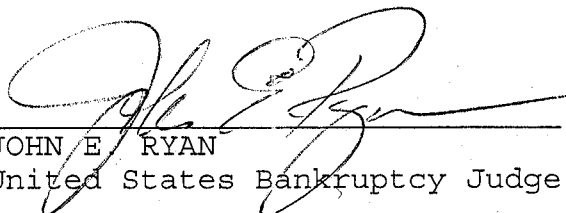
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3 V. CONCLUSION

4 A trustee may revoke a technical abandonment when a debtor
5 provides false or incomplete information, effectively precluding a
6 proper investigation of the abandoned asset. Here, the
7 information provided was either false or incomplete. Based on the
8 statements by Debtor and her attorney, Trustee reasonably
9 concluded that the Property was of no value to the estate. In
10 closing the case, Trustee inadvertently abandoned substantial
11 value in the Property which would otherwise have been administered
12 for the benefit of creditors. Trustee has acted in good faith in
13 moving to vacate the technical abandonment, and Debtor has not
14 been prejudiced by the delay. Therefore, a revocation of the
15 technical abandonment of the Property is appropriate under these
16 circumstances.
17

18 This memorandum opinion shall constitute my findings of fact
19 and conclusions of law.
20

21 Dated:

22
23 DEC 16 2003

24 
25 JOHN E. RYAN
26 United States Bankruptcy Judge
27
28